

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by FISHERMAN'S KETTLE)	DOCKET NO. 881578-SU
RESTAURANT for an exemption from FPSC)	
regulation for a sewage treatment)	ORDER NO. 20644
facility in Monroe County.)	
_____)	ISSUED: 1-23-89

ORDER INDICATING NON-JURISDICTIONAL STATUS OF
FISHERMAN'S KETTLE RESTAURANT'S SEWAGE TREATMENT SYSTEM

BY THE COMMISSION:

On December 16, 1988, by letter and a supporting affidavit, Fisherman's Kettle Restaurant ("the restaurant") requested acknowledgment from the Commission that its sewage treatment system for its establishment in Islamorada, Florida is exempt from regulation by this Commission.

The subject establishment is an existing privately-owned restaurant with a six-unit motel in the rear. The sewage treatment and disposal is currently accomplished by a septic tank system, which the county health department is requiring to be upgraded to secondary because the system does not meet current sanitary regulations. Pursuant to Section 367.031, Florida Statutes, either a certificate authorizing service or proof of exemption from the Commission's jurisdiction is required prior to issuance of a DER construction permit.

The restaurant's affidavit states that the proposed treatment plant will serve the restaurant and motel exclusively; offsite hookups will be neither solicited nor accepted. Furthermore, no specific charge for sewage service will be levied against anyone.

The restaurant's engineer advised us in a telephone conversation on December 19, 1988 that the restaurant's cost of providing sewage service will be considered to be an operational cost which will be absorbed into the restaurant's overall cost of doing business.

Section 367.011(3), Florida Statutes, provides that "the Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates". Emphasis supplied.

Section 367.021(3), Florida Statutes, defines a "utility" as an entity, "who is providing, or proposes to provide, water or sewer service to the public for compensation."

Since the restaurant is going to consider the cost of providing sewage service to be an operational cost, and no specific charge for sewage service will be made to anyone, we find that Fisherman's Kettle Restaurant is not a "utility" within the meaning of Section 367.021(3), Florida Statutes and thus is not subject to this Commission's jurisdiction.

In consideration of the above, it is therefore

ORDERED by the Florida Public Service Commission that Fisherman's Kettle Restaurant, whose address is Route 1 Box 1108, Islamorada, Florida 33036, is not a "utility" as defined in Section 367.021(3), Florida Statutes, and thus is not

DOCUMENT NUMBER-DATE

00853 JAN 23 1989

FPSC-RECORDS/REPORTING

ORDER NO. 20644
DOCKET NO. 881578-SU
PAGE 2

subject to this Commission's jurisdiction. It is further

ORDERED that should there be any change in circumstances or method of operation, Fisherman's Kettle Restaurant, or its successor(s) in interest, shall inform this Commission within thirty days (30) of such change so that we may determine whether our decision herein is still appropriate. It is further

ORDERED that Docket No. 881578-SU is hereby closed.

By ORDER of the Florida Public Service Commission,
this 23rd day of JANUARY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JRF

by: Kay Feigon
Chief, Bureau of Records